

REMARKS

Applicants have amended the specification to correct a typographical error. Claims 1-11 have been cancelled. Claims 12, 16, 21, 25, 28, 31, 32, 34, and 36 have been amended. Claims 12 and 25 have been amended to recite the ratios of polypeptides as taught in paragraph [0053]; claim 16 has been amended for clarity; claim 21 has been amended to correct a typographical error; claim 28 has been amended to delete the word "preferably" and to include a ceramide with the proviso that the ceramide is provided in an amount greater than the polypeptide, which is supported by, for example, original claim 31; claim 31 has been amended to correct a typographical error and to correct its dependency; claims 32 and 34 have been amended to correct their dependency; and claim 36 has been amended to include the recitation that the ceramide is provided in an amount that is greater than the polypeptide. New claims 39-68 have been introduced. Support for the recitations of these claims can be found throughout the specification, e.g., in original claims 1-38. Additionally, claim 35 has been withdrawn as being drawn to a non-elected species, and new claims 45, 59, and 66-68 are also drawn to non-elected species. To the extent the Examiner intends to withdraw these new claims, Applicants would consent. No new matter has been added via these amendments to the claims and specification.

Claim Objections

The Patent Office has objected to claims 7 and 16 as being of improper dependent form and for failing to further limit the subject matter of a previous claim. Claim 7 has been cancelled and claim 16 has been amended for clarity. Accordingly, withdrawal of the objections to the claims is requested.

Specification

The Patent Office has requested that the trademarks such as BIOPEPTIDE EL and MATRIXYL should be capitalized and accompanied by the generic terminology. Applicants thank the Examiner for directing the Applicants' attention to the use of trademarks throughout the specification. With regard to the Examiner's request for correction throughout the specification, Applicants traverse on grounds that the proprietary nature of the trademarks throughout the specification are already capitalized. For example on page 2, at paragraph [0008], the specification discloses: " In addition, Sederma SAS has been selling a product including about 100 ppm of Palmitoyl-Val-Gly-Val-Ala-Pro-Gly (SEQ ID NO: 1). This product, sold under the trade name BIOPEPTIDE EL, is used for helping restore the suppleness and firmness of skin , but not for treating wrinkles. Other polypeptides of various lengths of amino acids are also known. These include N-palmitoyl-Gly-His-Lys sold by Sederma SAS under the trade name BIOPEPTIDE CL and N-palmitoyl-Lys-Thr-Thr-Lys-Ser (SEQ ID NO: 2) also sold by Sederma SAS under the trade name MATRIXYL." In view of the foregoing, Applicant respectfully requests withdrawal of the rejection.

35 U.S.C. § 112 (second paragraph)

Claims 21, 25, and 28 have been rejected for allegedly being indefinite. Specifically, the Patent Office has taken the position that the word "and" in the Markush group of claim 21; "human in need of same" in claim 25; and "preferably" in claim 28 is indefinite. In view of the amendments to claims 21, 25, and 28, the Examiner's rejections are now moot. Accordingly, withdrawal is requested.

35 U.S.C. § 102

Claims 28 and 31 have been rejected for allegedly being anticipated by Seiberg *et al.* Applicants respectfully

traverse because the claims as amended and indeed without amendment are not anticipated.

The Seiberg reference does not demonstrate any recognition of the desirability of using more ceramide than protein, nor is that concept exemplified. While the Seiberg reference identifies ranges of the peptide and the "cosmetically active agent", the latter which includes ceramides along with several paragraphs of other possible compounds, and while the range of the cosmetically active agent is broader than the peptide range, there is nothing in Seiberg that teaches that the amount of ceramide should be larger than the amount of peptide. Finally, as mentioned above in Seiberg, ceramide is one of the compounds mentioned in five full paragraphs among hundreds of compounds that could be added to the topical composition of Seiberg. (See paragraphs [0050] - [0055].) Thus, the combination of a peptide in Seiberg with any one of the compounds in those five paragraphs of "Additional Cosmetically Active Agents," without any further directions to use a ceramide is not enough to be anticipatory. As such, the claims cannot be anticipated.

35 U.S.C. § 103

Claims 1-21, 25-28, 31-32, 34-36, and 38 have been rejected for allegedly being obvious over the Seiberg *et al.* in view of Lintner and Cauwet-Martin *et al.* With respect to claims 1-11, which have been cancelled, and claim 35, which has been withdrawn, the rejection is now moot. With respect to claims 12-21, 25-28, 31-32, 34 and 36, Applicants respectfully traverse the rejection because, based on a review of the references, none of the combinations of the cited art teach the claimed invention.

Seiberg does not teach or suggest the ranges of polypeptides claimed and does not support the claimed ratios of ceramide to polypeptide. Seiberg's combination with Lintner

and Cauwet-Martin fail to cure these deficiencies. These claimed elements are not taught by either of these secondary references. Neither Lintner nor Cauwet-Martin, alone or in combination, teaches the claimed ratios of peptide to ceramide or the full range of amounts now recited in the claims. While the amounts may overlap, Seiberg does not teach the full range as claimed, for example, in claim 12. Thus, even if these secondary references were properly combinable, which they are not, their combination would fail to render obvious the claimed invention.

Moreover, Cauwet-Martin teaches away from the claimed invention. The Federal Circuit has recognized that a teaching away is strong evidence of nonobviousness. *Monarch Knitting Mach. Corp. v. Morat*, 139 F.3d 877, 885 (Fed. Cir. 1998). Specifically, it teaches that the concentrations by weight of the peptide to ceramide range from 1.5 to 10, which would teach away from the claimed compositions wherein the ceramide is provided in an amount that is greater than the polypeptide. Thus, in view of the state of the art at the time of filing the invention, as evidenced by Cauwet-Martin, a skilled artisan would not have been motivated to arrive at the presently claimed compositions having the claimed ratios of ceramides to polypeptides. Accordingly, in view of the foregoing, withdrawal of the rejection is requested.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

Michael H. Teschner

Registration No.: 32,862

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants